disregarded.[8] This is the view of the Supreme Court in *People v. Sweetman*,[9] where approval has been withheld from the dictum of the District Court of Appeal in the same case.[10] The latter court considered it error to instruct the jury that a confession must be disregarded if believed to be made under promise of reward, menace, duress, or fear of punishment. There is a certain logical accuracy in the theory of the Supreme Court but it complicates the matter before the jury by necessitating instructions on the technical and artificial law of confessions, difficult for the jury to understand, instructions that will in all probability be disregarded. The view of the Supreme Court is also unnecessary for the protection of the defendant because he is safeguarded by the court whose duty it is to exclude confessions not shown to be voluntary. The effect of the ruling of the Supreme Court is to give the defendant two chances to avoid his confession, two trials of the same issue. The case, however, is an illustration of the tendency in the law to pass up to the jury all disputed questions of fact whenever possible, especially where the question, while not necessarily the ultimate issue in the case, is nevertheless so strongly probative as to be really decisive.

A. M. K.

LIS PENDENS: PURCHASER PENDENTE LITE.—The rights of a purchaser of specific property which is the subject matter of litigation at the time of the purchase have been fully discussed by the courts in this country and in England. By statute in this state the doctrine of "lis pendens" may become operative in cases involving the title and possession of real property.[1] The question whether the doubtful common law doctrine "that all Her Majesty's subjects are bound to take cognizance, at their own peril, of what is passing in Her Majesty's Courts of Justice with reference to specific property"[2] applies to personal property has not been settled in the United States by unanimity of opinion.[3] In California the Supreme Court in *MacDermot v. Hayes*[4] decided that a purchaser of shares of corporate stock during the pendency of an action to have the stock declared the subject of a trust, who took

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[8] People v. Thomson (1905), 145 Cal. 717, 79 Pac. 435, a case of a dying declaration which involves the same principle as confessions. The language in People v. Oliveria (1899), 127 Cal. 376, 59 Pac. 772, that the jurors are the sole judges of credibility, might be construed otherwise, but was probably not so intended. See also People v. Profumo (1913), 23 Cal. App. 376, 138 Pac. 109.

[9] (April 2, 1917), 53 Cal. Dec. 459, 164 Pac. 627, 628; People v. Gibson (1915), 28 Cal. App. 334, 152 Pac. 316, in which the court held that the admissibility of the confession is a question to be determined solely by the court must also be considered as overruled.

[10] (Feb. 1, 1917), 24 Cal. App. Dec. 234.

[1] Cal. Code Civ. Proc., § 409.

[2] Chitty, J., in Wigrain v. Buckley, 1894, 3 Ch. Div. 483, 488.

[3] 21 Am. & Eng. Encyc. of Law 626, 25 Cyc. 1453.

[4] (May 9, 1917), 53 Cal. Dec. 586, 594.

without actual notice of the litigation was not charged with constructive notice. This follows the English rule that the doctrine of "lis pendens" does not apply to personal property.[5]

The English doctrine as finally announced was based largely on the conveniences of trade and the convenience of bankers who dealt in negotiable securities. Aside from this basis of convenience there has been a vigorous controversy, as to the nature of the doctrine of "lis pendens." One line of authorities, led by Bellamy v. Sabine,[6] contends that it was a doctrine of common law and equity resting on the foundation that it would be impossible to terminate litigation successfully "if alienations pendente lite were permitted to prevail." The other line of authorities following Murray v. Ballou[7] explains it upon the equitable doctrine of constructive notice. These doctrines have often been discussed and reviewed.[8] The first class of cases seems to go back to the so-called real actions of the common law, in which the judgment finally settled all rights to the thing which was the subject matter of the action. Strictly speaking, every action which has for its subject matter a specific thing real or personal, and which has for its purpose an adjudication which will extinguish, transfer or alter a right, title, interest or status, may be considered a proceeding in rem.[9] Following this view, or taking up the doctrine of constructive notice, which the Supreme Court of California in the case under discussion eliminated by construing Section 1908, subd. 2 of the Code of Civil Procedure, may it not be suggested that the English view of convenience goes too far in declaring that personal property should not be made subject to the doctrine of "lis pendens"? Negotiable instruments and securities from their very nature should be excluded.[10] But why, in a state like California, should we not amend the statute on "lis pendens"[11] to include chattels and personal property considered in equity as of peculiar value, and also personal property held subject to an express trust? It might also cover other equitable proceedings, such as bills for rescission, cancellation, and reformation. The statute in claim and delivery,[12] although it does in a manner relieve against hardships, is not sufficient. Injunction is often resorted to, but it binds merely the defendant. Creditor's bills and insolvency and bankruptcy proceedings usually operate so as to charge purchasers with notice without causing undue

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[5] Wigrain v. Buckley, supra, n. 2.
[6] (1857), 1 De G. & J. 566, 44 Eng. Rep. R. 842, 849.
[7] (1815), 1 Johns. Ch. (N. Y.) 566.
[8] 20 Harvard Law Review, 488; 7 Columbia Law Review, 282. See also 16 Harvard Law Review, 225; 22 Harvard Law Review, 455; 12 Columbia Law Review, 82. Bispham, Principles of Equity (8th ed.), § 274.
[9] Street, Foundations of Legal Liability, Vol. III, Chap. IV.
[10] County of Warren v. Marcy (1877), 97 U. S. 96, 105, 24 L. Ed. 977.
[11] See n. 1, supra.
[12] Cal. Code Civ. Proc., § 509, et seq.

inconvenience to business.[13] Recorded notices of pending divorce proceedings have been held not to bind the property of the husband.[14] The whole problem of constructive notice could be more scientifically covered than it is by our present statutes.

M. C. L.

MUNICIPAL CORPORATIONS: "MUNICIPAL AFFAIRS" UNDER THE CALIFORNIA CONSTITUTION.—The Supreme Court, speaking through Chief Justice Morrison, in 1880, said with reference to the privisions of the Constitution of 1879 relating to municipal corporations: "It is manifestly the intention of the Constitution to emancipate municipal governments from the authority and control formerly exercised over them by the legislature."[1] The intention, however, of the constitutional provisions establishing a home rule regime of municipal government, was thwarted by the interpretation given by the Supreme Court in a series of cases.[2] In order to correct this interpretation of the Constitution, section 6 of Article XI was amended in 1896 by the insertion of the words "except in municipal affairs", making the latter portion of the last sentence read: "and cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this constitution, except in municipal affairs, shall be subject to and controlled by general laws."

If control over municipal affairs was intended by the amendment of 1896 to be given to cities automatically, by very force of their incorporation, this intent was again held by the Supreme Court not to have been expressed. Instead of that result the Court held that in order for any particular municipal affair to be within the authority of the city or town and beyond nullification by the legislature, such particular municipal affair must have been claimed in the charter: "every city in the state is subject to and controlled by general laws relating to municipal affairs, unless, by virtue of some provision of the Charter under which is exists and is acting, such municipal affairs may be engaged in and performed by it."[3] A final effort was made in 1914 to amend section 6, and also section 8, of Article XI, so as to give all cities having freeholder charters the power to exercise, as a matter of course, all strictly municipal functions without going to the pains of making any enumeration thereof in their several charters. The wording of section 6, under amend-

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[13] 21 Am. & Eng. Encyc. of Law, 642.

[14] Sun Insurance Co. v. White (1898), 123 Cal. 196, 55 Pac. 902; Mayberry v. Whittier (1904), 144 Cal. 322, 78 Pac. 16. Cf. 29 Ann. Cas. 1913 D, 950. (note).

[1] People v. Hoge (1880), 55 Cal. 612.

[2] Staude v. Election Commissioners (1882), 61 Cal. 313; Thomason v. Ashworth (1887), 73 Cal. 73, 14 Pac. 615; People v. Henshaw (1888), 76 Cal. 436, 18 Pac. 415; Ex parte Ah You (1890), 82 Cal. 339, 22 Pac. 929; Davies v. City of Los Angeles (1890), 86 Cal. 37, 24 Pac. 771.

[3] Fragley v. Phelan (1899), 126 Cal. 383, 58 Pac. 923.